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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL. No. 537 / 2005 SINGLE BENCH

APPELLANTS NON-APLICANTS :

1. Smt. Asha Devi Agrawal, Age 37 years, Present Husband Dinesh Agrawal, R/o. Raigarh, Through : Vijay Kumar Agrawal, Sharada S.T.D. P.C.O., Netaji Chowk, Janjgir, District- Janjgir-Champa.

2. Master Amar Agrawal, Age 5½ years, S/o Ashok Kumar Agrawal, Through : Vijay Kumar Agrawal, Sharada S.T.D. P.C.O., Netaji Chowk, Janjgir, District- Janjgir-Champa (C.G.).

P.R. No. 124-Misc. Presented by Shri Anil Kumar dated 13.04.05

VERSUS

RESPONDENT APPLICANT :

Ashok Kumar Agrawal, Age- 35 years, S/o Mahabir Prasad Agrawal, R/o. F.C.I. Colony, Near Shiv Mandir, Rampur, Korba, Tahsil and District- Korba (C.G.).

MEMO OF APPEAL UNDER SECTION 47 OF GUARDIANSHIP AND WARDS ACTS

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. No. 537/05 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

28-4-2006

Mr. Amit Sharma, learned counsel for the appellants.
Mr. Goutam Khetrapal, learned counsel for the respondent.

Heard.

This Miscellaneous Appeal under Section 47 of the Guardians and Wards Act, 1890 has been preferred against the order dated 25-2-2005 passed by learned Additional District Judge, Korba in Case No.14/2002 and by which the learned Additional District Judge, allowing the application under Section 6 of the Hindu Minority and Guardianship Act, 1956, preferred by the respondent, has directed to hand over the custody of Master Amar Agrawal, the appellant No.2 from the custody of his maternal grand father Vijay Kumar Agrawal to the custody of the respondent Ashok Kumar Agrawal.

Learned counsel for the appellants submits that Vijay Kumar Agrawal, in whose custody Master Amar Agrawal is residing, is not a party to the proceeding and, therefore, no valid order could be passed without arraying Vijay Kumar Agrawal as party and, therefore, the order passed by the learned Additional District Judge is inexecutable.

Learned counsel for the respondent fairly agrees that in absence of Vijay Kumar Agrawal, no executable order could be passed with respect to the custody of Master Amar Agrawal, as Master Amar Agrawal is admittedly presently in the custody of Vijay Kumar Agrawal. He prays that the matter be remanded back to the trial Court with liberty to the respondent – applicant to file an appropriate application for arraying Vijay

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

M.A. No. 537/05

मामला क्रमांक ..... **सन् 200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kumar Agrawal as non-applicant and thereafter for adjudication of the matter after giving opportunity of hearing to Vijay Kumar Agrawal.

The above proposition is not disputed by learned counsel for the appellants, therefore, the matter is remanded back to the trial Court with a liberty to the respondent – applicant to move an application for adding the name of Vijay Kumar Agrawal as a non-applicant and on such application being moved, the same shall be decided by the learned trial Court and thereafter the matter shall be decided after giving opportunity of hearing to the parties.

Accordingly, the appeal stands disposed of in the above terms.

Sd/-
Dhirendra Mishra
Judge